

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AMERICAN INTERNATIONAL)	CASE NO. 1:16CV00924
MARITIME CO., and CPW AMERICA)	
CO.,)	HON. JAMES S. GWIN
)	
Plaintiffs,)	
)	
v.)	
)	
FEDERAL MARINE TERMINALS, INC.,)	MOTION OF DEFENDANT FEDERAL
)	MARINE TERMINALS, INC. TO FILE
Defendant.)	SECOND AMENDED
)	COUNTERCLAIM
)	AGAINST PLAINTIFFS, <i>INSTANTER</i>

Pursuant to Federal R. Civ. P. 15(a)(2), Defendant, Federal Marine Terminals, Inc., (“FMT”) respectfully requests leave of this Court to immediately file its Second Amended Counterclaim (a copy of which is attached as Exhibit 1 and incorporated herein).

FMT filed a one-count counterclaim against Plaintiff, American International Maritime Co. (“AIM”), as part of its Answer and Defenses to the Complaint. On September 9, 2016, FMT filed an Amended Counterclaim as against AIM, amending the original claim with additional information. The September 9th filing did not include any new claims against AIM. Since that filing, and in connection with the litigation of this matter, FMT continues to undertake investigation and review of materials and information, which investigation and review has resulted in the discovery of additional, potential claims against AIM, as well as co-Plaintiff, CPW America Co.

Under Rule 15(a)(2) leave shall be freely given when justice so requires.¹ FMT's request for leave satisfies this standard. FMT is not filing this Motion for purposes of delay and previously has not sought leave to amend its pleadings (after the date to do so set by this Court had passed). In addition, Plaintiff AIM has not yet responded to either FMT's initial or amended counterclaim against it. Discovery is in its earliest stages. As such, granting this Motion will not prejudice any of the parties², nor delay the case.

Wherefore, Defendant, Federal Marine Terminals, Inc., respectfully requests that this Court grant its Motion and permit Defendant to file its Second Amended Counterclaim. A proposed Order granting this Motion is attached for the Court's convenience.

Respectfully submitted,

**FEDERAL MARINE TERMINALS,
INC.,**

By: /s/ Shari L. Friedman
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¹ FMT has not requested the consent of Plaintiffs' lead counsel, John Duvieilh, as FMT has been informed that Mr. Duvieilh is presently out of the country.

² The primary consideration is whether there is actual prejudice to the opposing party because of the delay. See *Jordan v. Cuyahoga Metropolitan Housing Authority*, 161 Ohio App.3d 216, 829 N.E.2d 1237 (8th Dist. 2005).

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CERTIFICATE OF SERVICE

I, Shari L. Friedman, hereby certify that on September 23, 2016, I electronically filed the foregoing *Motion of Defendant Federal Marine Terminals, Inc. to File Second Amended Counterclaim Against Plaintiffs, Instanter* with the Clerk of the U.S. District Court for the Northern District of Ohio, Eastern Division, via its CM/ECF system, which will send electronic notification to the following counsel of record, who have consented to accept service by electronic means:

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